



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2006

Ms. Carol Longoria
The University of Texas System
Office of the General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2006-05143

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 249300.

The University of Texas at Austin (the "university") received a request for the following: (1) "[a] list of payments by date and dollar amount made by [four named companies] to the LBJ School or any programs associated with the school as a result of agreements the companies reached with the Travis County district attorney's office[;]" (2) "[a]ny correspondence or emails to or from the companies in connection with these payments[;]" and (3) "[a]ny correspondence, letters, emails or documents detailing communications between officials of the LBJ School and District Attorney Ronnie Earle or members of his staff regarding programs to be paid for with the aforementioned funds."¹ The university has released some responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.1235 of the Government Code. You also inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, you notified the interested third party of the request for information and of its right to submit arguments explaining why the information concerning the company

¹In correspondence to this office, the requestor has agreed to allow the university to redact bank account and routing numbers from the requested documents. *See* Gov't Code § 552.222 (governmental body may ask requestor to clarify or narrow scope of request). As this information is no longer encompassed by the request, it is not responsive and we do not address its availability in this ruling. In this regard, because the requestor has narrowed his request to exclude bank account and routing numbers, we need not address your arguments under section 552.136 of the Government Code.

should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received correspondence from the third party. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that you have not submitted information responsive to item 3 of the request for our review. We also note that the requestor states that the university has not released such information to him. Further, you have not indicated that such information does not exist, or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to item 3 of the request exists, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, you acknowledge, and we agree, that the university has failed to request a decision within the ten-business-day deadline mandated by section 552.301(b) of the Government Code. *See id.* § 552.301(b). We note that the university also failed to submit the information required by section 552.301(e) within fifteen business days of the university's receipt of the written request for information. *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.1235 of the Government Code can provide a compelling reason to withhold information, we will address the university's claim under that exception. We will also consider whether the submitted information must be withheld to protect the interests of the third party.

The university and the third party both claim that the submitted information is excepted from disclosure under section 552.1235 of the Government Code. This section excepts "the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]" Gov't Code § 552.1235(a). However, section 552.1235 does not except from disclosure the amount or value of an individual gift, grant, or donation. *See id.* § 552.1235(b). "Institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 of the Education Code defines an

“institution of higher education” as “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” Educ. Code § 61.003(8). The university states it is a component of the University of Texas System. Thus, we agree that the university qualifies as an “institution of higher education” under section 61.003 of the Education Code. Further, because section 552.1235 of the Government Code does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See id.* § 311.005. “Person” includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

Upon review of the submitted information, we agree that the university must withhold information identifying a donor who made a gift, grant, or donation of money or property to the university pursuant to section 552.1235 of the Government Code. Although the amount or value of an individual gift, grant, or donation is not excepted from disclosure by section 552.1235, in this case there is no way for the university to release the requested dollar amounts without disclosing the identity of the donor. Thus, in this instance, we conclude the university must also withhold information that would tend to disclose the identity of a donor. We note, however, that the university has the discretion to release information in a form that does not reveal a specific donor’s identity. *See* Attorney General Opinion DM-41 (1991) (while governmental body must provide “suitable copy” of information to requestor, form of information will vary depending on nature of requested information); *see also* Open Records Decision Nos. 682 at 5 (2005) (determining requestor can accept information via website in fulfillment of request), 633 at 3-4 (1995) (determining requestor can agree to accept record substitution), 606 at 3 (1992) (determining requestor can agree to accept new document on which only disclosable information has been consolidated and retyped).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 249300

Enc. Submitted documents

c: Mr. R.G. Ratcliffe
Houston Chronicle
1005 Congress Avenue, Suite 1060
Austin, Texas 78701
(w/o enclosures)